

This is an appeal from an Order granting claimant's request for medical benefits. The Order requires respondent to present a list of three psychiatrists from which claimant is to choose for treatment of depression. Respondent contends the Administrative Law

Judge erred in finding claimant's psychological problems arose out of and in the course of her employment. The same order requires respondent to pay certain medical expenses at the Cotton O'Neil Clinic but this latter portion of the order is not appealed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds that it does not have jurisdiction to hear this appeal and the Order of the Administrative Law Judge, therefore, remains in effect as originally entered.

The Appeals Board has limited jurisdiction to hear appeals from preliminary orders. Pursuant to K.S.A. 44-551, the Appeals Board is not to conduct a review of a preliminary order unless it is alleged that the Administrative Law Judge has exceeded his or her jurisdiction. This general requirement, on its face applicable to all appeals from preliminary orders, uses the same language used under the "Old Act" (i.e. pre-July 1, 1993) to limit review of preliminary orders by the Director. To this general language, the legislature added in 1993, the concept of jurisdictional findings by amendments to K.S.A. 44-534a. K.S.A. 44-534a now labels certain findings "jurisdictional" and indicates those findings are subject to review on appeal from a preliminary order. Those are findings with regard to disputed issues of:

- (1) Whether claimant suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given;
- (4) Whether claim is timely made; and
- (5) Whether certain other defenses apply.

The two statutes must be construed so that their provisions are harmonious with each other. See United Steelworkers of America Local 4760 v. Kansas Commission on Civil Rights, 253 Kan. 327, 855 P.2d 905 (1993). Considered together, these statutes set up a two-pronged analysis. First, the Appeals Board must determine whether the appeal is from one of the five findings identified in K.S.A. 44-534a as jurisdictional. If so, the Board does have jurisdiction and the review is a de novo review of the challenged jurisdictional finding or findings. The affirmative inclusion of these five jurisdictional findings as appealable issues does not, however, exclude all other possibilities. The Appeals Board, therefore, as the second prong in the analysis, must examine the claims on appeal to determine if the appeal otherwise alleges that the Administrative Law Judge exceeded his or her jurisdiction. If so, the claim is reviewed

and the Appeals Board determines whether, in its judgment, the Administrative Law Judge has exceeded his or her jurisdiction.

In this case, respondent contends the appeal is from one of the five findings listed in K.S.A. 44-534a. Specifically respondent contends the appeal is one which challenges a finding that the psychological injury arose out of and in the course of claimant's employment. If that were an appropriate description of the challenged finding, the decision would be subject to review. However, the challenged finding is, in fact, one step removed from the finding that the claimant suffered accidental injury arising out of and in the course of her employment. The evidence clearly indicates claimant did suffer a back injury arising out of and in the course of her employment. The finding challenged here is a finding relating to the consequences of that injury. It is more analogous to a finding relating to the nature and extent of claimant's injury. The Appeals Board notes that it is not necessary

to show the psychological problems resulted from the work performed. See Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557 (1989). Strictly speaking, it is not necessary that the psychological injury arise out of or in the course of employment. It is, instead, required to be shown the psychological problems are directly traceable to the physical injury. The Appeals Board, therefore, finds respondent's appeal does not, when properly described, challenge a finding that claimant suffered accidental injury arising out of and in the course of employment.

The Appeals Board must therefore examine the appeal to determine if it otherwise alleges the Administrative Law Judge exceeded his or her jurisdiction. Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. It includes the authority to make an incorrect decision. See Taber v. Taber, 213 Kan. 453, 516 P.2d 987 (1973); Provance v. Shawnee Mission U.S.D. No. 512, 235 Kan. 927, 683, P.2d 902 (1984). Jurisdiction is often discussed in terms of the two subcategories of subject matter and personal jurisdiction. See State v. Bickford, 234 Kan. 507, 672 P.2d 607 (1983). Personal jurisdiction is established only when the action is in the proper court after appropriate service of process upon the individual or voluntary appearance by the individual. See Buehne v. Buehne, 190 Kan. 666, 378 P.2d 159 (1963). "Subject matter jurisdiction" is, on the other hand, the power to hear and decide a particular type of action. See State v. Matzke, 236 Kan. 833, 696 P.2d 396 (1985). It appears that in this case the Administrative Law Judge had both personal and subject matter jurisdiction.

Except for the claim that the appeal relates to whether the injury arose out of and in the course of employment, respondent makes no argument for exercise of jurisdiction by the Appeals Board. The Appeals Board finds the asserted basis for jurisdiction to be without merit for the reasons expressed and finds no other basis for treating the appeal as one which alleges the Administrative Law Judge exceeded his jurisdiction in entering the appealed order.

AWARD

WHEREFORE, the Order entered by Administrative Law Judge Floyd V. Palmer dated December 27, 1993, granting claimant's request for medical benefits and requiring respondent to provide a list of three psychiatrists from which claimant is to choose remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of April, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Derek J. Shafer, 1400 Bank IV Tower, Topeka, Kansas 66603
Eric T. Lanham, P.O. Box 1300, Kansas City, Kansas 66117
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director